IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos. 1454 to 1487 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL.LAQ OFFICER - Appellant
Versus
BHIKHAJI KALAJI THAKORE & 1 - Respondents

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Appearance :
MR RC KODEKAR, A.G.P. for appellant.
MR KM SHETH for the claimant/s
MR AD OZA for acquiring-body.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 05/05/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Admitted. Mr.K.M.Sheth, learned counsel, waives service of notice on behalf of the claimant/s in each

appeal. Mr.A.D.Oza, learned counsel, waives service of notice on behalf of the Executive Engineer, Narmada Yojna, Division No.3/4, Vejalpur, Ahmedabad, in each appeal. Having regard to the facts of the case, the appeals are taken up for final disposal today.

2. All these appeals filed under Section 54 of the Land Acquisition Act, 1894 [“the Act” for short] read with Section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated May 1, 2003, rendered by the learned 2nd Extra Assistant Judge & Special Judge (L.A.R.), Ahmedabad Rural at Navrangpura, in Land Acquisition Cases No. 972 to 1005 of 1996, by which the Reference Court has awarded compensation to the claimants at the rate of Rs. 45/- per sq.mts. for their acquired lands.

3. A proposal was received by the State Government to acquire lands of village Karoli, Taluka : Dahegam, District : Ahmedabad for the public purpose of construction of Vahelal Branch Canal of Narmada Project. On scrutiny of the said proposal, the State Government was satisfied that the lands of village Karoli were likely to be needed for the said public purpose. Therefore,

notification under Section 4 of the Act was issued, which was published in Official-Gazette on two different dates i.e. August 26, 1991 and August 29, 1991. The land owners were served with notices under Section 4 of the Act. They had filed objections to the proposed acquisition. After considering their objections, report as envisaged by Section 5A(2) of the act was forwarded by the Special Land Acquisition Officer to the State Government. On consideration of the said report, the State Government was satisfied that lands of village Karoli were needed for public purpose mentioned in the notification published under Section 4(1) of the Act. Therefore, declaration under Section 6 of the Act was made, which was published in the Official-Gazette on January 18, 1992. The interested persons were thereafter served with notices for determination of compensation of their lands acquired. The claimants appeared before Special Land Acquisition Officer and claimed compensation at the rate of Rs. 100/- per sq.mtr. However, having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.2.10 ps. per sq.mtr. The claimants were of the view that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing requiring the Special

Land Acquisition Officer to refer the matters to the Court for determination of appropriate amount of compensation payable to them. Accordingly, references were made to the District Court, Ahmedabad, which were numbered as noticed earlier. On behalf of the claimants, Gandaji Jesangji Solanki was examined at Exh.47, who was claimant in Land Acquisition Case No.979 of 1996. In his evidence, he stated that the lands acquired were fertile and all claimants were taking different crops. It was further mentioned by him that his village had got all the facilities, such as, light, water, Hospital, Primary School, High School, bus-stand, road etc. and, therefore, claimants were entitled to enhanced compensation. During the course of recording of his testimony, the witness produced award of the Reference Court rendered in Land Acquisition Reference No.291 of 1991 relating to the lands of village Kadadara at Exh.45. It may be mentioned that no evidence was adduced by the acquiring-body. On the basis of evidence adduced by the claimants, the Reference Court was of the opinion that Exh.45 furnished good guidance for the purpose of determining market value of the lands acquired in the instant case. Therefore, after placing reliance on the previous award produced at Exh.45, the Reference Court held that the claimants were

entitled to compensation at the rate of Rs.45/- per sq.mtr., by judgment and award dated May 1, 2003, giving rise to the above-numbered appeals.

4. This Court has heard Mr.R.C.Kodekar, learned Assistant Government Pleader for the appellant as well as Mr.K.M.Sheth, learned counsel for the claimants and Mr.A.D.Oza, learned counsel for the acquiring-body, at length and in great detail. This Court has also considered the documents produced by the learned counsels for the parties, for perusal of the Court.

5. It may be mentioned that no sale-deed was produced by any of the parties before the Reference Court to enable it to determine market value of the lands acquired in the instant case, nor market value of the acquired lands could be determined on the yield basis because of paucity of evidence. It is well settled principle of law that previous award of the Reference Court relating to the lands of adjoining village, which has become final, can be taken into consideration for the purpose of determining market value of the lands acquired from the adjoining village. The witness examined on behalf of the claimants categorically stated in his testimony that

previous award related to lands of village Kadadara. It was also mentioned by him that lands of village Kadadara and lands of village Karoli were similar in all respects. It was further asserted by the witness that there was common boundary between the two villages. These assertions made by the witness of the claimants on oath could not be demonstrated to be untrue during his cross-examination by the learned counsel appearing for the acquiring body. Under the circumstances, this Court is of the firm opinion that the Reference Court did not commit any error in placing reliance on the previous award produced by the claimants at Exh.45 for determining market value of the lands acquired in the instant case. Exh.45 indicates that it is the judgment and award dated December 31, 2001 rendered by the learned 2nd Extra Assistant Judge and Special Judge (L.A.R.) Ahmedabad ® at Navrangpura in Land Acquisition Cases No.267/91 to 290/91, 714/91, 715/91, 248/92 and 249/92. It indicates that pursuant to notification issued under Section 4(1) of the Act, which was published in the Official-Gazette on April 3, 1986 & April 4, 1986, lands of village Kadadara were acquired for public purpose of construction of Narmada Main Canal of Sardar Sarovar Project. Therein, the claimants had claimed compensation

at the rate of Rs. 50/- per sq.mtr., but, the Special Land Acquisition Officer had offered compensation at the rate of Rs. 1.00 per sq.mtr. The perusal of the said award further makes it very clear that placing reliance on the previous award relating to the lands of village Zank, the claimants were awarded compensation at the rate of Rs.31.00 per sq.mtr. It may be mentioned that the award produced by the claimants at Exh.45 has become final, inasmuch as the same was not challenged before the higher forum. It is relevant to notice that in Exh.45, notification issued under Section 4 of the Act was published on two different dates i.e. April 3, 1986 and April 4, 1986; whereas in the instant case, notification issued under Section 4(1) of the Act was published on August 26, 1991 and August 29, 1991. In view of time-gap, the Reference Court has awarded rise in prices of lands at the rate of 10% per annum for five years. The Supreme Court has held in catena of decisions that when previous award is relied upon for the purpose of determining market value of the lands acquired from another village, and if there is time-gap between publication of notifications under Section 4(1) of the Act, the claimants would be entitled to reasonable rise in price of lands at the rate of 10% per annum. Thus, this Court

is of the opinion that the correct principles of law have been applied to the proved facts by the Reference Court before determining the compensation payable to the claimants. The learned counsel for the State Government could not point out any error committed by the Reference Court while determining market value of the lands acquired in the instant case, warranting interference of this Court in the instant appeals. These appeals, which have no merits, are, therefore, liable to be dismissed.

For the foregoing reasons, all the appeals fail and are dismissed. There shall be no orders as to costs.

[J.M.PANCHAL,J.]

[BANKIM.N.MEHTA,J.]

(patel)